

FILED

DATE: 11/20/14

TIME 11:15 A.M.

Mahe Wess Jensen
COURT CLERK

1 Quanah M. Spencer
2 Q. Spencer Law PLLC
3 1312 N. Monroe Street, Suite 127
4 Spokane, WA 99201
5 Phone: (509) 252-6020
6 Fax: 888-243-2557
7 quanah@qspencerlaw.com

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IN THE NEZ PERCE TRIBAL COURT
IN AND FOR THE NEZ PERCE RESERVATION

DAVID M. CUNNINGHAM, JR.,
Petitioner,

No. CV 2015-016

v.

**DECLARATION OF DAVID M.
CUNNINGHAM, JR IN
SUPPORT OF PETITION FOR
HABEAS CORPUS**

TEREMA CARLIN, warden of the
Clearwater County Jail; ALICE
KOSKELA, Nez Perce Tribal Court
Administrator,

Respondents.

I, David M. Cunningham, Jr., hereby declare and state as follows:

1. I am over the age of 18, and competent to be a witness in this matter, and I make this Declaration of my own personal knowledge.
2. I am an enrolled member of the Nez Perce Tribe.

DECLARATION OF DAVID M. CUNNINGHAM,
JR.- 1

Q. Spencer Law PLLC
1312 N. Monroe Street, Suite 127
Spokane, WA 99201

1 3. Beginning in April, 2013 until the day of my trial, in December, 2013, I
2 repeatedly requested, through letters, faxes, and telephone and in-person
3 conversations with my attorneys, that he or she subpoena phone records,
4 medical records, and other documents that I believed were relevant to my
5 defense. At no point during the proceedings did any of the attorneys conduct
6 even a cursory review of the criminal, medical, or other relevant records of
7 the testifying witness.
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11 4. I also repeatedly contacted my attorneys to discuss trial strategy, what
12 discovery had been conducted, and other crucial and critical elements to my
13 defense, but counsel either failed to return his letters, faxes, or calls or
14 responded in an untimely manner except for one email from Ken Nagy on
15 October 22, 2013 for the November 12, 2013 trial that never happened.
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18 5. I encouraged my counsel to pursue, and requested that they obtain a medical
19 examination of Ms. Jonelle Whitman, as I was aware of her extensive
20 history of mental illness, including being involuntarily committed at St.
21 Joseph's Regional Medical Center. I believed this to be relevant as she was a
22 testifying witness and she has a history of abusing the justice system to her
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1 own ends. Despite my repeated requests my attorney did not even conduct a
2 surface level investigation into Ms. Whitman.
3

4 6. In addition to medical records, I requested that my attorney subpoena phone
5 and text messages, as I believed I had a valid defense, which could only be
6 developed through these phone records. Again, my attorneys made no
7 attempt to obtain these records.
8

9 7. Also, when I drove from Spokane to attend my trial in November, 2013, I
10 was informed that not enough jurors had responded to the summons. At this
11 time, I requested that my attorney make a motion to dismiss, but my attorney
12 made no such motion.
13
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15 8. Prior to trial, I had again contacted my attorney to find when the trial was set
16 and in an attempt to prepare for trial. My attorney would respond
17 occasionally, never adequately preparing myself for trial. I was also aware
18 that my counsel did not communicate with the witnesses or prepare them in
19 any manner prior to the actual trial date.
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22 9. Due to my attorney's repeated failure to communicate or adequately
23 represent me, Loretta Halfmoon and I requested that he withdraw from
24 representing me so that I could obtain private counsel. Rather than request
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26

1 this of the Court, he simply informed me that it was too late to make such a
2 request.
3

4 10. During trial I testified as a witness on my own behalf. Prior to testifying, I
5 was never counseled as to whether or not I should testify. I was unaware that
6 by taking the stand I would waive my so-called "fifth amendment rights."
7 My counsel never informed me of the consequences and rights I was
8 waiving by testifying at trial. Had I been aware of this, I would not have
9 testified at trial. Throughout the testimony I was concerned about the
10 gestures Judge Plackowski was making, such as shaking his head and
11 leaning back in his chair in apparent exasperation.
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15 11. Further, it had been communicated to me that Silas Whitman had contacted
16 the Court to see that they sentence me to the maximum permitted.
17

18 12. Additionally, during the jury selection portion of the trial I became
19 concerned with the fact that a juror mentioned having a social relationship
20 with the prosecutor. Due to this concern, I requested that my attorney strike
21 him from the jury. Despite this request, my attorney did not make such a
22 request, and the juror became jury foreman.
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25 13. At no point do I feel that any of my appointed counsel actually represented
26

1 me throughout the trial and sentencing in this matter. My attorneys failed to
2 pursue any line of defense or conduct even minimal discovery. It was
3 difficult just to get any timely response from attorneys as to when my next
4 court hearing would be, let alone preparing for trial.
5

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7 DATED at Orofino, Idaho this 20 day of November, 2014.
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11 _____
12 David M. Cunningham, Jr.

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27 DECLARATION OF DAVID M. CUNNINGHAM,
JR.- 5

Q. Spencer Law PLLC
1312 N. Monroe Street, Suite 127
Spokane, WA 99201

NEZ PERCE TRIBAL COURT
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M. L. Cross-Jewett
COURT CLERK

1 Quanah M. Spencer
2 Q. Spencer Law PLLC
3 1312 N. Monroe Street, Suite 127
4 Spokane, WA 99201
5 Phone: (509) 252-6020
6 Fax: 888-243-2557
7 quanah@qspencerlaw.com

8
9 **IN THE NEZ PERCE TRIBAL COURT**
10 **IN AND FOR THE NEZ PERCE RESERVATION**

11 **DAVID M. CUNNINGHAM, JR.,**
12 **Petitioner,**

No. *CV. 2015-016*

13 v.

14 **DECLARATION OF LARRY**
15 **VALADEZ IN SUPPORT OF**
16 **PETITION FOR HABEAS**
17 **CORPUS**

18 **TEREMA CARLIN, warden of the**
19 **Clearwater County Jail; ALICE**
20 **KOSKELA, Nez Perce Tribal Court**
21 **Administrator,**

22 **Respondents.**

23 I, Larry Valadez, hereby declare and state as follows:

- 24 1. I am over the age of 18, and competent to be a witness in this matter, and I
25 make this Declaration of my own personal knowledge.
26 2. I am a licensed private investigator (WA License # 3250).

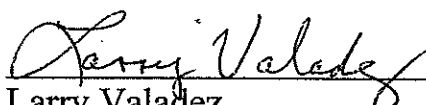
27 DECLARATION OF LARRY VALADEZ- 1

28 Q. Spencer Law PLLC
1312 N. Monroe Street, Suite 127
Spokane, WA 99201

1 3. The audio interviews attached as exhibits to the Habeas Petition are true,
2 correct, and complete copies of the interviews.

3
4 4. I also declare that the attached transcripts and summaries of the interviews
5 are true, correct, and complete copies which are accurate representation of
6 the entirety of the interview.
7

8
9 DATED at Spokane, Washington this 19TH day of NOVEMBER
10 2014.

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14 
15 Larry Valadez

NEZ PERCE TRIBAL COURT
FILED

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TIME 11:15 A.M.
M. Spencer-Jenkins
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Spokane, WA 99201
3 Phone: (509) 252-6020
Fax: 888-243-2557
4 quanah@qspencerlaw.com

5
6 **IN THE NEZ PERCE TRIBAL COURT**
7 **IN AND FOR THE NEZ PERCE RESERVATION**

8
9 **DAVID M. CUNNINGHAM, JR.,**
Petitioner,

No. CJ.2015-016

10
11 v.

12 **DECLARATION OF CONITA**
13 **DESAUTEL IN SUPPORT OF**
14 **PETITION FOR HABEAS**
CORPUS

15 **TEREMA CARLIN**, warden of the
16 **Clearwater County Jail**; **ALICE**
17 **KOSKELA**, Nez Perce Tribal Court
Administrator,

18 Respondents.
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21 I, Conita Desautel, hereby declare and state as follows:

- 22 1. I am over the age of 18, and competent to be a witness in this matter, and I
23 make this Declaration of my own personal knowledge.
24

- 1 2. After hearing the outcome of the Appeal in Mr. Cunningham's matter, I
2 contacted Appellate Judge Cyndi Jordan via facebook messenger regarding
3 the appeal.
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5 3. Cyndi Jordan told me that the appellate panel found against Mr.
6 Cunningham due in part to Mr. Cunningham's appellate counsel filing
7 several motions, which it is my understanding the Court never heard.
8
9 4. Judge Cyndi Jordan also told me that while she felt that there were sufficient
10 grounds for granting the appeal, she instead chose to deny it.
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12
13 DATED at Spokane, Washington this 19 day of
14 December, 2014.
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18 _____
19 Conita Desautel
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CHAPTER 1-6
NEZ PERCE TRIBAL CIVIL RIGHTS ACT
(chapter added 10/24/00)

§ 1-6-1 Title

This chapter shall be known as the Civil Rights Act of the Nez Perce Tribe.

§ 1-6-2 Civil Rights of Persons Within Tribal Jurisdiction

The Nez Perce Tribe in exercise of its sovereign powers of self government shall not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the tribal council for a redress of grievances.

(b) Take private property for public use without just compensation.

(c) Make or enforce any law which divests title of a tribal member or his heirs or assigns to an allotment of tribal land.

(d) Deny any person within its jurisdiction the equal protection of the law or to deprive any person within its jurisdiction of liberty or property without the due process of the law.

(e) Subject any person for the same tribal offense to be twice put in jeopardy.

(f) Compel any person in any criminal case to be witness against himself.

(g) Deny any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense, to have assistance of counsel and to have these rights explained to him at the time of arrest. If the defendant can show to the satisfaction of the court that he cannot afford counsel, counsel may be provided at tribal expense if funds for this purpose are available in the tribal judicial budget.

(h) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments.

(i) Pass any bill of attainder or ex post facto law.

(j) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

(k) Full Disclosure

The members of the Nez Perce Tribe are guaranteed full disclosure of information concerning criminal and civil proceedings in which they are a party, pursuant to §1-1-6 of Chapter 1-1, Administration of Tribal Court of the Nez Perce Tribal Code.

The U.S. Bill of Rights

The Preamble to The Bill of Rights

Congress of the United States

begun and held at the City of New-York, on

Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Note: The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Note: The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendments 11-27

Note: The capitalization and punctuation in this version is from the enrolled original of the Joint Resolution of Congress proposing the Bill of Rights, which is on permanent display in the Rotunda of the National Archives Building, Washington, D.C.

Page URL: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

U.S. National Archives & Records Administration
8601 Adelphi Road, College Park, MD, 20740-6001, • 1-86-NARA-NARA • 1-866-272-6272